82-712

No. 82-_____

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In The

Supreme Court of the United States

October Term, 1982

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IOWA BEEF PROCESSORS, INC.,
A Corporation,
Petitioner,

vs.

UNITED FOOD AND COMMERCIAL WORKERS,
LOCAL NO. 222, AFL-CIO,
Respondent.

---o---

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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PETITION FOR CERTIORARI

---o---

CHARLES E. SYKES
ARTHUR T. CARTER
ALANIZ, BRUCKNER & SYKES
780 NBC Center
P.O. Box 81468
Lincoln, NE 68501
(402) 474-3373
Attorneys

QUESTIONS PRESENTED

1. IS A REEXAMINATION OF THE *STEELWORKERS TRILOGY*[1] NECESSARY FOR PURPOSES OF A CLARIFICATION OF THE PERMISSIBLE BOUNDS OF AN ARBITRATOR'S AUTHORITY, IN TERMS OF WHEN AN ARBITRATOR'S DECISION WILL BE FOUND TO HAVE DRAWN ITS ESSENCE FROM A COLLECTIVE BARGAINING AGREEMENT?

DESIGNATION OF CORPORATE PARTIES

Information under Rule 28.1: Iowa Beef Processors, Inc. (IBP) is a wholly owned subsidiary of Occidental Petroleum Corporation. Its subsidiaries are as follows: Madison Foods, Inc.; Madison Lines, Inc.; Texas Amarillo Systems Company; Processed Beef Express, Inc.; IBP Service Center Corp.; IBP International, Inc.; IBP Leasing Corporation of Nebraska; IBP Properties, Inc.

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[1] *Steelworkers v. American Manufacturing Co.*, 363 U.S. 564 (1960), *Steelworkers v. Warrior Navigation Co.*, 363 U.S. 574 (1960), *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

TABLE OF CONTENTS

	Page
Questions Presented	i
Designations of Corporate Parties	i
Table of Authorities	iii
Opinions Below	2
Jurisdiction	2
Statutes Involved	2
Statement of the Case	3
Reasons for Granting the Writ (Argument)	9
Conclusion	11

APPENDICES

Eighth Circuit Opinion	A-1
Circuit Court Opinion	B-1
Arbitrator's Decision	C-1
Collective Bargaining Agreement	D-1

TABLE OF AUTHORITIES

Page

Steelworkers v. American Manufacturing Co., 363 U.S. 564, 80 S.Ct. 1343 (1960) ..... i, 9
Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593, 80 S.Ct. 1358 (1960) ..... i, 9
Steelworkers v. Warrior Navigation Co., 363 U.S. 574, 80 S.Ct. 1347 (1960) ..... i, 9

STATUTES

28 U.S.C. § 1254(1) 2
29 U.S.C. § 185 3
29 U.S.C. § 1254 2

No. 82-_____

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IOWA BEEF PROCESSORS, INC.,
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vs.

UNITED FOOD AND COMMERCIAL WORKERS,
LOCAL NO. 222, AFL-CIO,
Respondent.

---o---

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

---o---

Petitioner, Iowa Beef Processors, Inc., respectfully requests that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit entered in this proceeding on July 26, 1982.

---o---

OPINIONS BELOW

The opinion of the Court of Appeals for the Eighth Circuit is reported at 683 F.2d 283 (8th Cir. 1982), and is reproduced in the Appendices to this Petition as Appendix A.

The opinion of the District Court for the Northern District of Iowa, dated December 8, 1981, is not officially reported, but is reproduced in the Appendices as Appendix B.

The underlying Arbitrator's Decision is reproduced in the Appendices as Appendix C.

JURISDICTION

The Judgment of the Court of Appeals for the Eighth Circuit was entered on July 26, 1982 and is reproduced in Appendix A to this Petition. The jurisdiction of this court is invoked under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

The statutory provisions cited in this Petition are purely jurisdictional. They are 28 U.S.C. § 1254(1) and 29 U.S.C. § 185.

These statutes, in relevant part, state as follows:

28 U.S.C. § 1254:

> Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> (1) By Writ of Certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

29 U.S.C. § 185:

> (a) Venue, amount, and citizenship. Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

STATEMENT OF THE CASE

The jurisdiction of the District Court below was invoked pursuant to Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, when Respondent, United Food and Commercial Workers, Local No. 222 (hereinafter "Union") sought enforcement of an arbitration decision and award. Petitioner Iowa Beef Processors (hereinafter "IBP") answered and counterclaimed to have the decision and award set aside.

IBP operates a meatpacking facility in Dakota City, Nebraska. It has been signatory to collective bargaining agreements with the Union, covering employees at that facility since 1969. The collective bargaining agreement in dispute in this matter was in effect from May 1, 1978, through April 30, 1982. A copy of this Agreement is reproduced in the Appendix.

The arbitrator's decision at issue in this matter involves language in that Agreement concerning the weekly guarantee providing for 36 hours of pay to

each employee to be scheduled Monday through Friday, subject to exceptions for six weeks during the contract year. During the weeks that the exception operated, the 36-hour guarantee could be scheduled and calculated on a Tuesday through Saturday basis, as had been the practice under the predecessor agreement.

The language in question was set out at Article VIII, § 1 of the agreement (see Appendix D) and provided:

> Section 1: *The Company will provide each regular full time employee, other than maintenance employees, thirty-six (36) hours of pay in each week of employment at the employees' straight time hourly rate which is to be scheduled Monday through Friday inclusively. However, it is agreed that the Company may not for more than six (6) weeks during each contract year satisfy the guarantee by utilizing the days Tuesday through Saturday inclusively,* provided the Company shall post a notice to that effect not later than the last workday of the week preceding any week in which this is to be applicable. Regular full-time maintenance employees will be guaranteed thirty-six (36) hours of pay in five (5) days for each week of employment. Hours employees are absent for any reason will be deducted from such thirty-six (36) hours. The guarantee will also be reduced by eight (8) hours for each full shift on which the plant is unable to operate because of storm, flood, fire, explosion, power failure, strikes, or boycotts by any labor union or the National Farmers Organization or similar groups. (Emphasis Added).

The particular issue before the arbitrator concerned the proper application of the Tuesday through Saturday exceptions to the Monday through Friday scheduling requirement of the guarantee. It was IBP's position that this language allowed it to change normal Monday through Friday scheduling to Tuesday through Saturday for six weeks each contract year for each working group which consists of employees in each division and department in the plant. The Union's position in contrast was that IBP would be allowed to change the work schedule only six weeks per year, regardless of whether only one or all divisions or departments operated on the alternative schedule.

As noted above, the prior collective bargaining agreement had provided for the scheduling and calculation of the guarantee on a Tuesday through Saturday basis. During negotiations for the agreement in question, the Union proposed to limit the days during which the guarantee could be satisfied to Monday through Friday, in an attempt to preclude IBP from shutting down the plant on Mondays, which was often necessary due to fluctuations of supply and demand in the beef marked.

IBP responded with a counterproposal that it be allowed to utilize any five consecutive days of the week, including Sundays, to satisfy the guarantee. The Union agreed to a compromise in proposing that if IBP would accept the Monday through Friday provision, it would allow IBP to revert back to the practice under the prior agreement six times each year. No explanation was made as to how the six weeks were to be counted, other than the IBP could revert back to the prior practice. This compromise was ul-

timately incorporated into the agreement as set out above.

Under the prior agreement, each employee was guaranteed thirty-six (36) hours of pay to be scheduled in any five (5) consecutive days except Sunday. In determining the days to count for purposes of applying the guarantee, IBP looked to the schedule of the division or department in which an employee worked. If an employee's division or department worked Tuesday through Saturday, the guarantee would be applied to him on that basis. The fact that another division and other employees worked Monday through Friday had no bearing on such an employee, and his guarantee would be based on the schedule his division had worked. Thus, in short, under the prior agreement the guarantee was applied strictly on an individual shift and divisional basis.

During the first year of the agreement in question, IBP utilized Tuesday through Saturday scheduling to satisfy the thirty-six (36) hour guarantee on numerous occasions, but on no more than six (6) occasions for each division within each shift. Notwithstanding the fact that no employee or division within a shift had been required for purposes of the guarantee to work a Tuesday through Saturday schedule on more than six (6) occasions, the Union filed a grievance. In that grievance it protested IBP's use of the exception on more than six (6) occasions plant-wide, and demanded that employees scheduled to work Tuesday through Saturday on April 9, 1979, and April 16, 1979, be paid as if they had been scheduled to work Monday through Friday.

As noted above, IBP's contention in the Arbitra-

tion proceeding was that the guarantee language in Article VIII, § 1, allowed it to revert to Tuesday through Saturday schedules for six (6) weeks each year for each employee or shift. The Union contended that IBP was allowed to revert to the exception six (6) times a year only on a plant-wide basis, regardless of the number of employees affected by each change.

The Arbitrator ruled on April 12, 1980, that the six (6) exceptions must operate on a plant-wide basis and thus adopted the Union's position. The key element of the Arbitrator's decision, however, was his express conclusion that what was actually involved in this dispute was a "mutual misunderstanding" between the parties and "that at the time agreement was reached, company representatives in all good faith had a subjective intention corresponding with the Company's position in this arbitration while Union representatives in equal good faith had an intention coinciding with its position."[2] Thus, the Arbitrator expressly concluded that no agreement had been reached between the parties concerning this portion of the contract.

In the face of what he had characterized as a "mutual misunderstanding," the Arbitrator proceeded to base his findings on general contract law principles stating:

> . . . The law of contracts provides a rather complex rule for resolving questions of this kind, which for purposes of this case can be paraphrased as follows: The term in dispute is to be interpreted in accordance with the meaning attached by the other, if that other

---

[2]See Appendix C, Arbitrator's Decision, at pgs. C9-10.

> *did have reason to know* of the meaning attached by the first. (See *Restatement* of *Contracts, Second,* Section 227). In the case at hand, neither party had *actual knowledge* of the meaning attached by the other because there was no explanation of the exception offered by either side, other than the reference to reverting to the practice under the predecessor agreement. This reference itself was susceptible to more than one meaning and did not deal with the question of how such incidents were to be counted.
>
> After careful review of all the surrounding circumstances and the purpose of the Union in proposing the modification, the Arbitrator has come to the conclusion that the Company *should have been* aware of the Union's intention, while the Union had no good reason to expect that the Company had a different intention.

See Appendix C, Arbitrator's Decision, at pgs. C-10-11.

The District Court sustained the Arbitrator's determination holding generally that the Arbitrator could find that the liberal language supported the Union's position, and that, alternatively, there was no mutual misunderstanding between the parties, but merely conflicting positions, susceptible of arbitral resolution.

The Eighth Circuit Court of Appeals affirmed the district court's decision. The court noted that well established principle that judicial review of an arbitration award is limited to deciding whether the award draws its essence from the collective bargaining agreement, and further noted that the courts may not reweigh the merits, but rather, must only determine whether the arbitrator has exceeded his

authority, citing *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960) and *Steelworkers v. American Manufacturing Co.*, 363 U.S. 564 (1960). The court then simply held that the arbitrator had not exceeded his authority and affirmed the district court.

ARGUMENT

A reexamination of the Steelworker's Trilogy[1] is needed in order to clarify the permissible bounds of an arbitrator's authority.

The general principle that an arbitrator's award may be enforced by a reviewing court only insofar as it draws its essence from the collective bargaining agreement is well established. In reviewing an arbitration award, a court must not reweigh the respective parties' claims, but must determine only whether the arbitrator has exceeded his authority. See *Steelworkers v. American Manufacturing Co.*, 363 U.S. 564, 568 (1960).

Perhaps the clearest expression of the law in this area is contained in *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960):

> When an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair resolution of a problem. . . . Nevertheless, *an arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own*

[1] *Steelworkers v. American Manufacturing Co.*, 363 U.S. 564 (1960), *Steelworkers v. Warrior Navigation Co.*, 363 U.S. 574 (1960), *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

> *brand of industrial justice.* He may of course look for guidance from many sources, yet *his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award.*

363 U.S. at 597 (Emphasis Added)

In the instant case, the arbitrator's authority was expressly and specifically limited in the collective bargaining agreement between the parties at Article XVII, § 2 as follows:

> [T]he Arbitrators decision in the grievance shall be final and binding . . . provided he shall have no authority other than to apply the terms and conditions specifically set forth in this agreement.

(See Appendix D.)

In this instance however, as noted above, the arbitrator clearly found that there was a mutual misunderstanding between the parties and therefore, no agreement on the critical portion of the agreement in question in this dispute. In spite of this finding, the arbitrator proceeded to place a meaning on the disputed language by applying abstract principles of contract law and his own notions of industrial justice.

It would seem that a clearer case of an arbitrator exceeding his authority could not be found. Once the arbitrator found that there was a mutual misunderstanding between the parties, he clearly was without the authority to proceed further and resolve the dispute by applying general principles of contract law. Yet the reviewing courts sustained these

findings and enforced the arbitrator's determination.

This case is a prime example of why this Court must reconsider and clarify some of the principles set forth in the "Steelworkers Trilogy" cases. Specifically, more guidance from this Court is needed to enable the lower courts to more reasonably and logically determine when an arbitrator has exceeded his contractual authority, i.e., whether an arbitration award "draws its essence from a collective bargaining agreement". The current stance of the courts in granting great deference to arbitral resolution of labor disputes is an admirable one to be sure, and it encourages efficient resolution of disputes outside of the courts. However, clearer guidelines are needed to effectuate the limitations placed on the judicial enforcement of arbitration decisions, as is evidenced by this case.

CONCLUSION

For all the reasons stated in this Petition, it is respectfully submitted that a writ of certiorari should issue to review the Judgment of the Eighth Circuit (Case No. 82-1054).

Respectfully submitted,

CHARLES E. SYKES
ARTHUR T. CARTER
ALANIZ, BRUCKNER & SYKES
780 NBC Center
P.O. Box 81468
Lincoln, NE 68501
(402) 474-3373
Attorneys

Dated October 21, 1982.

Appendix A

United States Court of Appeals

For the Eighth Circuit

No. 82-1054

United Food and Commercial Workers, Local No. 222, AFL-CIO Appellee, vs. Iowa Beef Processors, Inc., a Corporation, Appellant.	* Appeal from the United States District Court for the Northern District of Iowa.

Submitted: June 16, 1982

Filed: July 26, 1982

Before LAY, Chief Judge; FAIRCHILD, Senior Circuit Judge;* and BRIGHT, Circuit Judge.

BRIGHT, Circuit Judge.

Iowa Beef Processors, Inc. (IBP), appeals from a district court order granting summary judgment in favor of the United Food and Commercial Workers, Local No. 222, AFL-CIO (the Union), and adverse to the interests of IBP. The Union had instituted the district court proceeding to enforce a labor arbitration award issued by the arbitrator, Raymond Goetz, on April 20, 1980. The district court sustained the arbitrator's award; we affirm the district court.[1]

---

[1]The Honorable Donald E. O'Brien, United States District Judge for the Northern District of Iowa.

*THOMAS E. FAIRCHILD, United States Senior Circuit Judge, Seventh Circuit, sitting by designation.

I. Background

The Union and IBP are parties to a collective bargaining agreement effective from May 1, 1978, to May 1, 1982, which covers IBP's production and maintenance employees at its Dakota City, Nebraska, facility. A dispute arose over the interpretation of article VIII, section 1 of the collective bargaining agreement, which provides:

> The Company will provide each regular full-time employee, other than maintenance employees, thirty-six (36) hours of pay in each week of employment at the employee's straight time hourly rate which is to be scheduled Monday through Friday inclusively. However, *it is agreed that the Company may for not more than six (6) weeks during each contract year satisfy the guarantee by utilizing the days Tuesday through Saturday inclusively, provided the Company shall post a notice to that effect not later than the last work-day of the week preceding any week in which this is to be applicable.* Regular full-time maintenance employees will be guaranteed thirty-six (36) hours of pay in five (5) days for each week of employment. Hours employees are absent for any reason will be deducted from such thirty-six (36) hours. The Guarantee will also be reduced by eight (8) hours for each full shift on which the plant is unable to operate because of storm, flood, fire, explosion, power failure, strikes, or boycotts by any labor union or the National Farm Organization or similar groups. [Emphasis supplied.]

After exhausting the contract grievance procedures, the parties submitted the dispute to arbitration. In the arbitration, IBP contended that the underlined language allowed it to change its normal

Monday-through-Friday scheduling to Tuesday-through-Saturday for six weeks each contract year for each working group of its employees in the Dakota City plant. The Union maintained that this same language allowed IBP to change the work schedule only six weeks per year, regardless of whether only one or all working groups operated on the alternative schedule.

The arbitrator upheld the Union's position and sustained the grievance for two reasons. First, the arbitrator considered the express terms of the disputed language, concluding that the plain meaning of the language in the provision supported the Union's position. The arbitrator then continued, stating that he believed a mutual misunderstanding existed between the parties. Given the different meanings the parties attached to the same language, the arbitrator resorted to general contract principles and construed the provision against IBP because IBP should have been aware of the Union's position.

IBP contended in the district court that the arbitration award should be set aside because (1) it did not draw its essence from the collective bargaining agreement, (2) the contract precluded the arbitrator from proceeding once he had acknowledged a misunderstanding between the parties, (3) the arbitrator improperly failed to consider the entire contract, (4) the literal language of the whole contract supported IBP's position, (5) the arbitrator improperly interpreted the contract, and (6) the arbitrator should not have granted the Union a favored status when interpreting the contract. The district court rejected these arguments, finding an adequate basis for the arbitrator's decision and determining that

the decision itself was within the arbitrator's authority.

On appeal, IBP has narrowed its contentions. It now argues that the arbitrator acted beyond his authority when he reached the merits of the dispute after finding a mutual misunderstanding. IBP also urges this court to conclude that the arbitration award fails to draw its essence from the collective bargaining agreement.

II. Discussion

It is well established that judicial review of an arbitration award is limited to deciding whether the award draws its essence from the collective bargaining agreement. *See, e.g., United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960) *Ford Parcel Services, Inc. v. Miscellaneous Drivers and Helpers Union No. 610*, 656 F.2d 387, 390 (8th Cir. 1981); *Kewanee Machinery Division v. Local Union No. 21*, 593 F.2d 314, 316-17 (8th Cir. 1979). In reviewing an arbitration award, this court does not reweigh the merits of the respective parties' claims, but only determines whether the arbitrator has exceeded his authority. *See United Steelworkers of America v. American Manufacturing Co.*, 363 U.S. 564, 568 (1960). This deferential stance encourages the resolution of labor disputes through arbitration. *Id.* at 569.

In the present case, we agree with the district court that there was an adequate basis for the arbitrator's decision in favor of the Union and that his decision was within his authority. As the district court correctly stated,

> the decision by the arbitrator that the "ordinary reader" of the English language would find that the contract supports the position of the union is sufficient to support the award and deny a reversal of the arbitrator's award. [*United Food & Commercial Workers, Local No. 222 v. Iowa Beef Processors*, No. C 80-4043, slip op. at 5 (N.D. Iowa Dec. 8, 1981) (order).]

As an interpretation of the literal language of the disputed provision, the arbitrator's decision obviously draws its essence from the collective bargaining agreement. In these circumstances, we need not reach IBP's arguments over the propriety of the arbitrator's alternative holding. Accordingly, we affirm.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT.

APPENDIX B

In The United States District Court
For The Northern District of Iowa
Western Division

United Food and Commercial Workers, Local No. 222, AFL-CIO,	)	
Plaintiff,	)	NO. C 80-4043
vs.	)	ORDER
IOWA BEEF PROCESSORS, INC., a Corporation,	)	
Defendant.	)	

This matter is before the Court after an arbitration proceeding between Iowa Beef Processors, Inc. (hereinafter IBP), and the United Food and Commercial Workers, Local No. 222, AFL-CIO (hereinafter the Union), which was held in Dakota City, Nebraska, on January 10, 1980. At issue in the arbitration proceeding was the proper interpretation to be given to the weekly guarantee language of the collective bargaining contract. That language is set forth at Article VIII, § 1 and provides:

> Section 1: The Company will provide each regular full-time employee, other than maintenance employees, thirty-six (36) hours of pay in each week of employment at the employee's straight time hourly rate which is to be scheduled Monday through Friday inclusively. However, it is agreed that the Company may for not more than six (6)

weeks during each contract year satisfy the guarantee by utilizing the days Tuesday through Saturday inclusively, provided the Company shall post a notice to that effect not later than the last work-day of the week preceding any week in which this is to be applicable. Regular full-time maintenance employees will be guaranteed thirty-six (36) hours of pay in five (5) days for each week of employment. Hours employees are absent for any reason will be deducted from such thirty-six (36) hours. The guarantee will also be reduced by eight (8) hours for each full shift on which the plant is unable to operate because of storm, flood, fire, explosion, power failure, strike or boycotts by any labor union or the National Farm Organization or similar groups.

Briefly stated, IBP contended that this language allowed it to change the normal Monday through Friday work schedule to run Tuesday through Saturday for six weeks each contract year for each employee. The Union's position was that IBP would be allowed to change the work schedule six times per year only on a plant-wide basis, regardless of the number of employees affected by each change. The arbitrator issued his decision in April 1980, ruling that the six exceptions must operate on a plant-wide basis, and thus adopted the Union's position.

The Union filed the instant action in this court to enforce the arbitration decision on May 16, 1980. The Union then filed a Motion for Summary Judgment on June 6, 1980. IBP has now filed a Cross Motion for Summary Judgment and submitted a Memorandum in opposition to the Union's Motion and in

support of its Cross Motion.'

The arbitrator ruled on April 12, 1980, that the six exceptions must operate on a plant-wide basis and thus adopted the Union's position. He concluded that a literal reading of the language involved indicated that the exceptions were to apply on a plant-wide basis, and alternatively, by virtue of contract law, the Union's version must be accepted since IBP "should have been aware of the Union's intention, while the Union had no good reason to expect that the Company had a different intention."

On this first point, that the literal language supported the Union, the arbitrator stated:

> To the ordinary reader of the English language, this would mean that *each week* in which the Company utilizes a Tuesday through Saturday schedule instead of Monday through Friday must use up one of the six exceptions allowed for that contract year, regardless of whether the particular schedule happens to involve only a crew, a Department, one Division, or the entire Plant.

On his second alternative point relating to how the principles of contract law should apply to this case, the arbitrator stated:

> The law of contracts provides a rather complex rule for resolving questions of this kind, which for purposes of this case can be paraphrased as follows: the term in dispute is to be interpreted in accordance with the meaning attached by the party who *had no reason to know* of the meaning attached by the other, if that other *did have reason to*

'This cause has been delayed by motions pertaining to venue and recusal.

know of the meaning attached by the first. (See *Restatement of Contracts, Second,* Section 227). In the case at hand, neither party had *actual knowledge* of the meaning attached by the other because there was no explanation of the exception offered by either side, other than the reference to reverting to the practice under the predecessor agreement. This reference itself was susceptible to more than one meaning and did not deal with the question of how such incidents were to be counted.

After careful review of all the surrounding circumstances and the purpose of the Union in proposing the modification, the Arbitrator has come to the conclusion that the Company *should have been aware* of the Union's intention, while the Union had no good reason to expect that the Company had a different intention.

The gist of the Union's Motion for Summary Judgment is that the arbitrator's award draws its essence from the contract and that this Court should enforce the arbitrator's decision. In resistance, and in support of its motion for summary judgment, the company takes several alternative positions. As stated in the defendant's cross-motion for summary judgment, those positions are: 1) the Court must set aside an arbitration decision which does not draw its essence from the collective bargaining agreement; 2) the contract precludes the arbitrator from proceeding further once it is conceded there is a misunderstanding between the parties; 3) the arbitrator improperly failed to consider the entire contract in rendering his decision; 4) the literal language of the contract, taken as a whole, supports IBP's position; 5) the arbitrator engaged in improper assumptions

in interpreting the contract; 6) the arbitrator acted improperly in granting the union a favored party status in the interpretation of the contract.

The Court has carefully considered all of the allegations of the Iowa Beef Processors Company against the arbitration and finds that they are not sufficient to overturn the arbitration award even though it can well be argued that they have credence. The reason for this conclusion is the test which this Court must apply to the arbitration award.

In the recent Eighth Circuit slip Opinion, *Ford Parcel Service, Inc. v. Miscellaneous Drivers and Helpers Union No. 610*, No. 80-1960 (8th Cir. 8/25/81), the Circuit Court stated on page 5 of said slip opinion as follows:

> Judicial review of his award is limited to the question of whether it "draws its essence from the collective bargaining agreement." *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960); *Kewanee Machinery Division v. Local Union No. 21, International Brotherhood of Teamsters*, 593 F.2d 314, 317-18 (8th Cir. 1979); *General Drivers Local No. 120 v. Sears, Roebuck & Co.*, 535 F.2d 1072, 1075 (8th Cir. 1976); *Western Iowa Pork Co. v. National Brotherhood Packinghouse & Dairy Workers, Local No. 52*, 366 F.2d 275, 277-78 (8th Cir. 1966).

In the *Steelworkers* case, *supra*, the Court in the holding on page 593 states as follows:

> The opinion of the arbitrator in this case, . . . is ambiguous; but mere ambiguity in the opinion accompanying an award is not a reason for refusing to enforce the award, even

> when it permits the inference that the arbitrator may have exceeded his authority.

Further, in the same opinion at page 595, the Court states as follows:

> Moreover, we see no reason to assume that this arbitrator has abused the trust the parties confided in him and has not stayed within the areas marked out for his consideration. It is not apparent that he went beyond the submission.

Neither is it apparent to this Court that the arbitrator here went beyond his submission.

Further, in *Steelworkers v. American Mfg.*, 363 U.S. 564, at page 568 the Court states as follows:

> The courts therefore have no business weighing the merits of a grievance, considering whether there is equity in the particular claim, or determining whether there is particular language in the written instrument which will support the claim.

The same opinion states on page 569:

> This standard is designed to encourage the resolution of labor disputes through arbitration.

In view of these standards and the matters relied upon by the arbitrator, this Court is not persuaded to reverse the arbitrator and vacate his award. The Court is convinced that there is an adequate basis for his holding. The Court believes that the determination made by the arbitrator on page 8 is a finding within the authority of the arbitrator. That finding was as follows:

> By the express terms of the second sentence,
>
> The company may utilize Tuesday through

> Saturday "for not more than six weeks during each contract year" to satisfy the guarantee. Thus, the contractual limitation on the number of exceptions is measured in terms of weeks. To the ordinary reader of the English language, this would mean that *each week* in which the company utilizes a Tuesday through Saturday schedule instead of Monday through Friday must use up one of the six exceptions allowed for that contract year, regardless of whether the particular schedule happens to involve only a crew, a department, one division, or the entire plant.

The company attacks the arbitration award further by saying that the arbitrator cannot apply his own equity to the problem and erroneously conclude that "the company should have been aware of the union's intention while the union had no good reason to expect the company had a different intention." The Court believes that the arbitrator did have sufficient reason to come to this conclusion in what the Court regards as his alternative conclusion. However, even if this alternative finding does not have a sound basis for support because of the contended position that it goes beyond the scope of the arbitrator's authority, the decision by the arbitrator that the "ordinary reader" of the English language would find that the contract supports the position of the union is sufficient to support the award and deny a reversal of the arbitrator's award.

This is also true of the claims made by IBP that there was a mutual understanding of the parties. The Union has never admitted that there was any such mutual misunderstanding. In his opinion, the arbitrator stated:

> The Arbitrator is convinced at the time agreement was reached on revision of Section 1 of Article VIII, Company representatives in all good faith had a subjective intention corresponding with the position taken in this arbitration, while Union representatives in equal good faith had an intention coinciding with its position.

This statement by the arbitrator simply says that the parties took opposing positions. This can hardly be considered unusual in a dispute such as this. If the intention of one party coincides with the intent of the agreement, the disagreement cannot be considered a "mutual mistake." This was the finding of the arbitrator and under the limited scope of review available to this Court, the Court cannot find that the arbitrator acted improperly.

Even though this Court might have found differently, the Court finds the arbitrator did not exceed his authority under the agreement and that his award was an interpretation of the contract which "drew its essence from the contract." As such, the award must stand. With the limited scope of review this Court has, it feels that it cannot say that authority for the award cannot be found or legitimately assumed from the terms of the agreement.[2]

IT IS THEREFORE ORDERED that:

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[2] *Storer Broadcasting Co. v. American Federation of Tel.*, 600 F.2d 45, 47 (6th Cir. 1979); *Kewanee Machinery v. Local Union No. 21, Intern. Bro.*, 593 F.2d 314, 317 (8th Cir. 1979; *General Drivers, Helpers and Truck Terminal Employees v. Sears, Roebuck and Co.*, 535 F.2d 1072, 1075 (8th Cir. 1976); *Resilient Floor v. Welco Manufacturing Co.*, 542 F.2d 1029, 1032 (8th Cir. 1976); *Western Iowa Pork Co. v. Nat'l Bro. Pack. & Dairy Workers*, 366 F.2d 275, 277-78 (8th Cir. 1966).

1. The plaintiff's motion for summary judgment is sustained.

2. The defendant's motion for summary judgment is denied.

IT IS FURTHER HEREBY ORDERED that the Clerk of this Court shall enter judgment in favor of the plaintiff in this cause.

December 8, 1981.

Donald E. O'Brien, Judge
UNITED STATES DISTRICT COURT

APPENDIX C

Before
Raymond Goetz
Arbitrator

In the matter of the Arbitration between:	)	
UNITED FOOD AND COMMERCIAL WORKERS, LOCAL UNION NO. 222	)	FMCS Case No. 79K/18651 Exception to Weekly Guarantee
and	)	
IOWA BEEF PROCESSORS, INC. Dakota City, Nebraska, Plant)	)	

Decision of the Arbitrator

This arbitration concerns the exception to the Monday through Friday scheduling requirement of the 36-hour weekly guarantee of pay set forth in Section 1 of Article VIII of the collective bargaining agreement between the parties effective May 1, 1978, which provides:

> *Section 1:* The Company will provide each regular full-time employee, other than maintenance employees, thirty-six (36) hours of pay in each week of employment at the employee's straight time hourly rate which is to be scheduled Monday through Friday inclusively. *However, it is agreed that the Company may for not more than six (6) weeks during each contract year satisfy the guarantee by utilizing the days Tuesday through Saturday inclusively, provided the*

> *Company shall post a notice to that effect not later than the last work-day of the week preceding any week in which this is to be applicable.* Regular full-time maintenance employees will be guaranteed thirty-six (36) hours of pay in five (5) days for each week of employment. Hours employees are absent for any reason will be deducted from such thirty-six (36) hours. The Guarantee will also be reduced by eight (8) hours for each full shift on which the plant is unable to operate because of storm, flood, fire, explosion, power failure, strikes, or boycotts by any labor union or the National Farm Organization or similar groups. (Emphasis added.)

Specifically, the issue is whether the limited exception for Tuesday through Saturday scheduling provided in the second sentence of this Section is available: (i) for six weeks per contract year with respect to *each individual employee,* as claimed by the Company, or (ii) only for a maximum *total* of six weeks per contract year for the Plant as a whole, regardless of the particular employees, Department, or Division involved in a given week, as contended by the Union.

The Facts

The grievances at issue in this case complain of the undisputed fact that during the contract year May 1, 1978, through April 30, 1979, the Company on eight separate occasions scheduled one or more shifts of one or more Divisions for work on Tuesday through Saturday, rather than Monday through Friday. (The Dakota City beef slaughtering and processing facility includes four separate Divisions

which normally work an "A" and "B" shift five days a week.) The eight occasions on which Tuesday through Saturday work was scheduled were:

Week Beginning	Shift	Division
10/23/78	"B"	Slaughter
	"B"	Processing
	"B"	Annex
10/30/78	"A"	Slaughter
	"A"	Processing
	"A"	Annex
1/22/79	"A"	Processing
1/29/79	"A"	Slaughter
	"A"	Processing
3/19/79	"B"	Slaughter
	"B"	Processing
4/2/79	"A"	Annex
	"B"	Processing
4/9/79	"B"	Slaughter
	"A"	Processing
	"A"	Annex
	"B"	Annex
4/16/79	"A"	Annex
	"B"	Annex

On each of these occasions, the Company made a timely posting of the notice called for by Section 1 of Article VIII whenever it plans to utilize the Tuesday through Saturday schedule. The number of employees involved on each of these occasions ranged from approximately 200 to more than 1,000. The total number of employees in the bargaining unit is in excess of 2,000.

In the predecessor collective bargaining agreement, Section 1 of Article VIII did not include the second sentence on which the Company now relies to justify its Tuesday through Saturday scheduling. This exception was then unnecessary because under that agreement, the basic 36-hour guarantee provision did not include the current requirement of the first sentence of Section 1 of Article VIII that the 36 hours must be scheduled Monday through Friday. Instead, it merely required that the 36 hours be scheduled in five consecutive days, exclusive of Sunday, as follows:

> Section 1: *The Company will provide each regular full time employee, other than maintenance employees, thirty-six (36) hours of pay in each week of employment at the employee's straight time hourly rate which is to be scheduled in five (5) consecutive days exclusive of Sunday. Such five (5) consecutive-day periods shall commence with the first scheduled day within the work week.* Maintenance employees will be guaranteed thirty-six (36) hours of pay in five (5) days for each week of employment. Hours employees are absent for any reason will be deducted from such thirty-six (36) hours. The guarantee will also be reduced by eight (8) hours for each full day in which the plant is unable to operate because of storm, flood, fire, explosion, power failure, strikes or boycotts by any labor union of the National Farmers Organization or similar groups. (Emphasis added.)

The Monday through Friday limitation now found in the first sentence of Section 1 of Article VIII of the current agreement was first proposed by the Union, without any exception, in the early stages of lengthy

negotiations preceding this agreement. This proposal was opposed by the Company on the ground that it would deny the Company needed flexibility to shut down on Mondays without substantial economic penalty, even though cattle might be unavailable for slaughtering. The Company counter-proposed that the existing provision be liberalized to permit the Company to utilize any five consecutive days of the week, including Sunday, for purposes of the weekly guarantee. The parties' disagreement on the weekly guarantee revisions ultimately became one of a number of issues leading to a strike that began on or about February 25, 1977, and was not settled until May 1, 1978.

Preliminary agreement on a compromise modification of the weekly guarantee provisions of Section 1 of Article VIII was reached at a meeting on September 8, 1977, between the parties' chief negotiators with Director Wayne Horvitz of the Federal Mediation and Conciliation Service. At that meeting, the Union proposed that if the Company would "buy" the Monday through Friday limitation, the Union would allow six exceptions. The unofficial notes of that meeting prepared for Company records by Arden Walker, Vice President for Industrial Relations, stated:

> 5) Guar. 36 hrs. M-F
> 6 wks for exception

Lewis Anderson, one of the Union's chief negotiators, later prepared for the Union membership the following summary of the agreement reached:

> 3. 36 hourly weekly guarantee Monday through Friday. The Company shall have the right to revert back to the

> weekly guarantee language of the 1974-77 Agreement six times each year.

Another memorandum prepared by him for Union Vice President Jesse Posten on November 6, 1977, based on notes taken during the negotiations, stated that the following issue, along with 12 others, had been resolved and agreed to between the parties:

> The Company agreed to the wording "36 hour weekly guarantee Monday through Friday. However, the Company may, for not more than 6 weeks during each contract year, revert back to the 1974-77 weekly guarantee language."
>
> In the Company's proposal of November 3rd they stated that 6 weeks during each contract year *they can utilize the days Tuesday through Saturday inclusively to satisfy the guarantee.*

Witnesses for both sides agree that in making its compromise proposal, the Union offered no explanation of exactly how the six exceptions would be counted, other than stating that the Company could "revert back" to the procedures under the 1974-77 agreement, and the Company asked for no further explanation or examples.

Under the predecessor agreement, the Company fulfilled its 36-hourly guarantee obligation either by scheduled employees Monday through Friday or Tuesday through Saturday, as best suited its operational needs. The Company satisfied the guarantee obligation on an individual employee basis by checking each employee's time card for each week to determine whether the full required 36 hours had been worked in five consecutive days. If not and if the employee was otherwise eligible for the guarantee,

he was paid the balance of the hours due, regardless of what the work schedule of other employees in his Division or Department might have been for that week. Since the Dakota City facility is in essence an integrated operation, usually when the Slaughter Division operates, the other three Divisions operate as well, but occasionally a small "crew" or "gang" of five or six employees — such as a loading or unloading crew or a rendering crew — might work a different schedule of days than other employees in the same Department or Division. Nevertheless, satisfaction or non-satisfaction of the guarantee of 36 hours per week was always individually determined on the basis of the particular hours actually worked by each individual employee.

Opinion

The Company contends that its interpretation of Section 1 of Article VIII must prevail because the wording is clear and unambiguous on its face, and that the parol evidence rule therefore precludes consideration of extrinsic evidence concerning the negotiations to vary or contradict the plain meaning of the words used.

The basic flaw in this contention is that to the extent the meaning of Section 1 of Article VIII may be clear from a literal interpretation of its language, that meaning strongly supports the Union's position rather than the Company's. In this regard, the Company focuses almost entirely on *the first sentence* of this Section, which is not the provision giving rise to the dispute in this case. It is of course true as the Company strenuously asserts that the 36-hour guarantee of pay in that sentence applies to

"*each* regular, full-time employee." (Emphasis added.) It follows that *the right to the guaranteed hours* must be individually determined on the basis of the actual work schedule of each employee, regardless of hours or days worked by those in other crews, Departments, or Divisions. That remained as true under the revisions in the current agreement as it had been under the predecessor.

This acknowledged manner of *applying the guarantee* prescribed in the first sentence is in no way inconsistent with the Union's position as to which deviant schedules shall be *counted as one of the six annual exceptions* under the second sentence. By the express terms of the second sentence, the Company may utilize Tuesday through Saturday "for not more than six (6) weeks during each contract year" to satisfy the guarantee. Thus, the contractual limitation on the number of exceptions is measured in terms of weeks. To the ordinary reader of the English language, this would mean that *each week* in which the Company utilizes a Tuesday through Saturday schedule instead of Monday through Friday must use up one of the six exceptions allowed for that contract year, regardless of whether the particular schedule happens to involve only a crew, a Department, one Division, or the entire Plant.

This literal interpretation is supported by the notice provision in the priviso to the second sentence of Section 1. That proviso requires the Company to "post a notice *to that effect* not later than the last work-day of the week preceding *any week in which this is to be applicable.*" (Emphasis added.) This can only mean that the notice requirement corresponds with each of the permitted exceptions. In

other words, whenever the Company intends to avail itself of one of the six permitted exceptions, it must post a notice "to that effect," and when it does so, it for all practical purposes has conceded that this is one of the six weeks to which the exception "is to be applicable." That has occurred eight times during the past contract year.

Thus, it is the Company rather than the Union which is seeking to avoid the plain meaning of Section 1. In effect, the Company is asking the Arbitrator to read the phrase "not more than six (6) weeks during each contract year" to mean "not more than six (6) weeks *per employee* during each contract year." (Emphasis added.) That would require reading into Section 1 significant expansive wording that is not now there, which would exceed the restriction on the Arbitrator's authority in Section 2 of Article XVII. Accordingly, if one looks only at the wording of Section 1 of Article VIII, he would have to conclude that each of the eight weekly schedules listed in the foregoing statement of facts has to be counted as one of the "weeks" in which the Company attempted to "satisfy the guarantee by utilizing the days Tuesday through Saturday inclusively."

In light of this conclusion, the Company's motion that the testimony of Mr. Anderson be stricken on the basis of the parol evidence rule becomes moot; even without his testimony, the Union's interpretation of the exception in the second sentence would be controlling on the basis of the conventional meaning of the words used. (Yet, it does not seem appropriate to dispose of this dispute solely on that basis since it appears that what was really involved here was a mutual misunderstanding between the par-

ties.) The Arbitrator is convinced that at the time agreement was reached on revision of Section 1 of Article VIII, Company representatives in all good faith had a subjective intention corresponding with the position taken in this arbitration, while Union representatives in equal good faith had an intention coinciding with its position. Both sides outwardly agreed on the same words (symbols) to express their intention, but actually *meant* something quite different. This sometimes happens due to the unfortunate fact that no word or phrase can always have only one true and unalterable meaning. (See *Corbin on Contracts,* Section 535 (1952)).

The question in such situations is whose meaning should prevail? The law of contracts provides a rather complex rule for resolving questions of this kind, which for purposes of this case can be paraphrased as follows: the term in dispute is to be interpreted in accordance with the meaning attached by the party who *had no reason to know* of the meaning attached by the other, if that other *did have reason to know* of the meaning attached by the first. (See *Restatement of Contracts, Second,* Section 227). In the case at hand, neither party had *actual knowledge* of the meaning attached by the other because there was no explanation of the exception offered by either side, other than the reference to reverting to the practice under the predecessor agreement. This reference itself was susceptible to more than one meaning and did not deal with the question of how such incidents were to be counted.

After careful review of all the surrounding circumstances and the purpose of the Union in proposing the modification, the Arbitrator has come to the

conclusion that the Company *should have been aware* of the Union's intention, while the Union had no good reason to expect that the Company had a different intention.

For the reasons explained above, just the words used themselves should have alerted the Company to the possibility that the Union would understand that the exceptions would be available only six times a year. As the draftsmen who selected this wording, the Company was in a position to protect its interest by spelling out the operation of the exception so that there could be no question about its intention. Having elected to keep its true intention obscured, the Company was at fault for the misunderstanding and can reasonably be charged with the meaning attached by the Union. Furthermore, the Company should have realized that if the exception were to be interpreted the way the Company hoped, the Union's proposed Monday through Friday limitation on days used for the guarantee would for all practical purposes become a nullity. Under that interpretation the Company probably would have had more exceptions for Tuesday through Saturday than it had been using under the language of the predecessor contract to which the Union was objecting. The experienced Company negotiators must have known that after more than six months of strike, the Union was giving ground grudgingly, not capitulating. Moreover, the problem to which the Union was addressing itself in its proposed changes in Section 1 of Article VIII arose out of just the type of scheduling which the Company now claims was intended to be permitted by the revisions; the Company therefore should have suspected that this was what the Union was trying to restrict.

The Union, of course, knew that limiting the exception to six times a year for the Plant as a whole might hamper the Company's operations to some extent by imposing a financial penalty on Tuesday through Saturday scheduling more often than that. Such operational difficulties, however, were inherent in its proposed revision of the guarantee from the very beginning and in no way alerted the Union to the Company's interpretation of the liberalized proposal. The compromise for six exceptions was never intended by the Union to eliminate those problems *altogether,* but simply to give the Company *some* of the flexibility it needed. The Union's reference to "reverting back" to the prior agreement six times a year was entirely consistent with such limited relief to the Company.

In this regard, the Company claims that of necessity it must frequently work small crews different schedules from the rest of their Division, and that if such deviations from the normal schedule are counted against the allowed exceptions, the basic limitation becomes unworkable. There are two reasons, however, why this claimed situation would not have been sufficient to put the Union on notice of the Company's understanding of how the exceptions were to work. First, there is no evidence that such scheduling on *Tuesday through Saturday* rather than *Monday through Friday* in fact occurred with any frequency, or if it did, that it ever came to the attention of Union officials. There is reason to believe that whatever special scheduling occurred for such small crews was in the nature of calling them in for extra overtime work, when others in their Department or Division were not working. In other words,

those situations would not seem to have involved the minimum guarantee of hours of pay. Second, to the extent that such situations might arise in the future, it would not necessarily render unworkable the Monday through Friday limitation on satisfying the guarantee. In those cases where only a handful of employees are to work Tuesday through Saturday, the Company could simply fail to claim these as exceptions, in which event it would have to make up the weekly guarantee for these few employees, while preserving the six exceptions for large groups of employees for whom substantial sums would be involved, such as an entire Department or Division. Clearly, if no exception is claimed, no exception is counted so long as the guarantee is determined by utilizing only work performed on Monday through Friday; Section 1 of Article VIII is not an absolute prohibition on Tuesday through Saturday scheduling, but only a guaranteed pay provision in the calculation of which Saturday work can not normally be considered as satisfying the guarantee.

Award

In applying the exception in the second sentence of Section 1 of Article VIII of the collective bargaining agreement to the satisfaction of the 36-hour weekly guarantee of pay set forth in the first sentence of that section, the Company shall consider each week in which Tuesday through Saturday scheduling takes place (and appropriate notice has been given) as one of the six exceptions allowed, regardless of the number of employees involved. Accordingly, Grievances P-91 dated April 11, 1979, P-87 dated March 30, 1979, and S-27 dated March 28, 1979, must

be sustained. The Company shall recompute the guaranteed hours of pay for the weeks of April 9 and 16, 1979, referred to in those grievances for the employees involved in accordance with this interpretation and make said employees whole for the amount of the guaranteed hours not paid.

Dated April 12, 1980.

Raymond Goetz, Arbitrator

APPENDIX D

AGREEMENT

This Agreement is made between IOWA BEEF PROCESSORS, INC., Dakota City, Nebraska, (hereinafter referred to as the Company) and the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, (hereinafter referred to as the Union), on behalf of it's Local Union No. 222.

ARTICLE I

RECOGNITION

The Company recognizes the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, as the sole and exclusive bargaining agency for all Company employees in the bargaining unit which includes all production and maintenance employees including Processing Division — Hides at the Company's Dakota City, Nebraska Plant, but excluding all office clerical employees, storeroom employees, nurses, buyers, salesmen, professional employees, beef graders, quality control, guards, office janitor(s), and supervisors as defined in the Act.

ARTICLE II

AUTHORIZED DUES DEDUCTIONS

Section 1: The Company will withhold from the employee's pay such amounts as he shall authorize in writing as provided by Nebraska law for Union dues and the same shall be remitted to the financial secretary of the Local Union marked for deposit only.

Section 2: In the event that an employee wishes

to revoke his check-off authorization, he shall be permitted to do so by informing a Union Officer during the last ten (10) days of any June or December.

Section 3: Neither the Union, it's officers, nor its members shall intimidate or coerce employees to cause them to join the Union.

Section 4: The Union agrees to indemnify and save the Company harmless against any and all claims, suits or other forms of liability arising out of the deduction of money for Union dues, assessments, and initiation fees from a member's pay.

ARTICLE III

PURPOSE OF AGREEMENT

Section 1: It is the intent and purpose of the parties hereto that this Agreement shall promote and improve the industrial and economic relationships between the Company, the Union and its members as set forth herein, and to set forth herein rates of pay, hours of work, and other conditions of employment to be observed between the parties hereto.

Section 2: It is recognized by both parties that they have a mutual interest and obligation in maintaining friendly cooperation between the Company and the Union which will permit safe, economical, and efficient operation of the plant.

ARTICLE IV

EMPLOYMENT POLICY

The Company agrees that it will give fair and reasonable consideration to any applicant or employee regardless of race, sex, color, creed, nationality, or membership in the Union.

ARTICLE V

MANAGEMENT RIGHTS

Section 1: The management of the plant and the direction of the working force — including the right to hire, suspend, discipline or discharge for cause; to assign to jobs; to transfer, promote or demote employees; to increase and decrease the working force; to determine job loads, production standards, and rules applicable to the employees; to determine products to be handled, produced or manufactured; the schedules of production; and the methods, processes, and means of production or handling; as well as the right to determine the qualifications and ability of employees — are vested exclusively in the Company provided this will not be used for the purpose of discrimination against any employee or to avoid any of the provisions of this Agreement.

Section 2: Foremen or other personnel may perform any duties that are necessary in the conduct of the business provided they are not used to replace bargaining unit personnel on a permanent basis.

ARTICLE VI

COMPANY AND UNION RESPONSIBILITIES

Section 1: During the term of this Agreement there shall be no strike, no sympathy strike, stoppage, slow-down, deliberate withholding of production, or suspension of work on the part of the Union, its members, or any individual covered by this Agreement, or lock-out on the part of the Company. In the event of a breach of this provision, the Union shall immediately declare publicly that such action is unauthorized and shall promptly order its members to resume their normal duties notwithstanding

the existence of any picket line. The Union further agrees that it will in no way interfere with the business of the Company by sanctioning or conducting a boycott on the handling of goods procured from a source or destined to a point where labor controversy may exist.

Section 2: The Company shall have the right to determine the discipline given an employee or employees for breach of this Article. The severity of the discipline imposed for such violation shall not be subject to arbitration; the Union shall, however, have the right to grieve the question of fact as to whether or not an employee or employees have breached the provisions of this Article.

ARTICLE VII

HOURS OF WORK

Section 1: The work week for payroll purposes shall start at 12:01 a.m. on Monday and end at midnight Sunday evening.

Section 2: Hours of work shall be scheduled in line with production requirements and employees will be notified in advance of changes in shift schedules. Employees shall be required to work the hours scheduled by the Company; however, the Company will not schedule work in excess of ten (10) hours per day with the exception of loading, unloading, and maintenance personnel. It is further agreed, however, that work already in progress must be completed. In the event the Company returns to a one-shift operation in any of the Divisions, the Union has agreed to meet with the Company for the purpose of negotiating scheduling limitations. With respect to loading, unloading, and maintenance

personnel, all work beyond twelve (12) hours would be worked on a voluntary basis.

Section 3: Time and one-half (1½) will be paid for hours worked in excess of eight (8) in any day. Time and one-half (1½) will be paid for all hours worked in excess of forty (40) in any one week. Gang time for the Kill Floor will be figured on the work schedule assigned to the Gutter. Time will be computed from the time men on this position commence their work until the time work is stopped at this position, and will be computed to the nearest one-fourth (¼) hour and odd minutes over and under seven (7) minutes will be accrued and adjusted at the end of each week.

Section 4: Employees who are called to work outside their regular work schedule after once going home for the day and not at a time when such work merges with their regular shift shall be guaranteed four (4) hours work at one and one-half (1½) times their regular rate or pay in lieu thereof. However, in the event an employee is called back after clocking out and before leaving the premises, he shall be paid "straight through" as though he had not punched out.

Section 5: Employees, other than part-time employees, working on holidays shall receive their regular holiday pay, (eight (8) hours straight time pay) and shall be paid two (2) times their regular rate for work actually performed on such holidays.

Section 6: Employees, other than part-time employees, working on Sunday, with the exception of regularly scheduled maintenance and yards, shall be compensated at twice (2) their regular hourly rate. Regular maintenance and yard employees

shall, when working on a day designated as their Sunday in lieu of the calendar Sunday, be compensated at twice (2) their regular hourly rate for work performed on that day.

Section 7: Employees, other than part-time employees, shall be compensated at one and one-half (1½) times their regular rate for work performed on their sixth day of work within the work week provided they have worked the first five (5) days of that work week or were absent because of a previously excused absence or because the employee was hospitalized during that work week. For purposes of computing premium pay for the sixth (6) day worked, an observed holiday shall be counted as a day worked. In the event the sixth (6) day falls on Sunday, employees shall be compensated as provided for in Section 6 of this Article. In the event the first five (5) days scheduled are not consecutive, Saturday will be a time and one-half (1½) day for production employees and maintenance employees who work the same schedule as production employees who otherwise meet the requirements outlined in this section for premium pay.

Section 8: All regular full-time employees who work between the hours of 6:00 p.m. and 6:00 a.m. will be paid fifteeen cents (15) per hour over their regular rate for such hours worked, except that no premium will be paid on the day shift if the starting time is less than forty-six (46) minutes prior to 6:00 a.m.

Section 9: For the purpose of the Agreement, Sunday shall be the twenty-four (24) hour period starting at 12:01 a.m. on Sunday, and Saturday shall be the twenty-four (24) hour period starting at 12:01

a.m. on Saturday.

Section 10: For the purpose of computing pay for hours worked on Saturday, Sunday, or paid holidays, a shift cutting across two calendar days shall be treated as work on the day on which the shift begins. However, in the event the shift exceeds eight (8) hours, such hours over eight (8) shall be compensated on the basis of the applicable rate for the calendar day on which such hours were worked.

Section 11: Premium pay payable under this Article will not be pyramided.

ARTICLE VIII

GUARANTEE

Section 1: The Company will provide each regular full-time employee, other than maintenance employees, thirty-six (36) hours of pay in each week of employment at the employee's straight time hourly rate which is to be scheduled Monday through Friday inclusively. However, it is agreed that the Company may for not more than six (6) weeks during each contract year satisfy the guarantee by utilizing the days Tuesday through Saturday inclusively, provided the Company shall post a notice to that effect not later than the last work-day of the week preceding any week in which this is to be applicable. Regular full-time maintenance employees will be guaranteed thirty-six (36) hours of pay in five (5) days for each week of employment. Hours employees are absent for any reason will be deducted from such thirty-six (36) hours. The Guarantee will also be reduced by eight (8) hours for each full shift on which the plant is unable to operate because of storm, flood, fire, explosion, power failure, strikes,

or boycotts by any labor union or the National Farm Organization or similar groups.

Section 2: The guaranteed work week shall apply only to regular full-time employees who have completed sixty (60) days of employment.

Section 3: Regular full-time employees called to work will be provided with a minimum of four (4) hours of work or pay in lieu of work unless the plant is unable to operate because of contingencies enumerated in Section 1 above. However, if employees are notified in sufficient time of a cancellation of scheduled work, call-in pay shall not be paid. For purposes of sufficient time referred to above, it shall be deemed sufficient to notify the news media (specifically Channel 9) by the 10:00 o'clock news report (which on some occasions is presented slightly after 10:00 p.m.) for "A" Shift of the following day and to similarly notify the news media (Channel 9) on the noon news report with respect to Shift "B" for the same day.

Section 4: Employees displaced because of the operations of the seniority provisions of this Agreement shall receive pay for only those hours worked in the week of such displacement.

Section 5: Employees recalled from layoff shall have their weekly guarantee reduced by the actual number of hours their gang or job worked prior to the employee's return from layoff.

ARTICLE IX

VACATION

Section 1: Regular full-time employees who complete one (1) full year of service with the Company will be granted one (1) week of paid vacation. The

first one (1) week vacation may be taken at any time, with Management approval, during the second year of service. One (1) week's vacation pay shall be equal to two percent (2%) of the annual earnings as indicated by the previously issued FORM W-2 — U.S. Treasury Department, or forty (40) hours of pay at straight time hourly rates — whichever is greater. Employees who complete three (3) full years of service will be granted two (2) weeks of paid vacation. The first two (2) week vacation may be taken at any time, with Management approval, during the fourth (4) year of employment. Employees who complete ten (10) full years of service will be granted three (3) weeks of paid vacation. The first three (3) week vacation may be taken at any time, with Management approval, during the eleventh (11) year of employment. Where the word "service" is used in this Section, it shall mean employment subsequent to February 18, 1966.

Section 2: To qualify for a paid vacation, the employee must have passed his anniversary date and have worked at least forty (40) weeks during the preceding anniversary year. For the purpose of this Section only, a week in which the employee works at least one (1) day will be counted as a week "worked". Credit will be given in any one (1) anniversary year for weeks missed because of jury duty, vacation, a maximum of twenty-six (26) weeks of compensable injury, four (4) weeks of consecutive sick leave, one (1) week of Union leave and two (2) weeks of leave for employees required to participate in official activities as a member of the National Guard or any United States military reserve.

Section 3: Employees who have qualified for a vacation under Section 2 at the time their employ-

ment is terminated will be paid for such vacation earned but not taken.

Section 4: An employee whose employment terminates during his second or any subsequent anniversary year shall be entitled to receive a pro rata share of vacation earned for that anniversary year based on the following formula:

(1) During the second (2) and third (3) years of employment, pro rata vacation shall be earned at the rate of one (1) day's vacation for every seventy-three (73) calendar days on the payroll.

(2) During the fourth (4) through the tenth (10) years of employment, pro rata vacation will be earned at the rate of one (1) day's vacation for each thirty-six and one-half (36½) calendar days on the payroll.

(3) During the eleventh (11) and subsequent years of employment, pro rata vacation will be earned at the rate of one (1) day's vacation for each twenty-four and one-third (24⅓) calendar days on the payroll.

Section 5: The vacation time of each employee shall be assigned within a department on a divisional seniority basis and shall be scheduled by March 1st of each year. However, it is recognized the employer must approve the vacation schedule in order to insure regular and efficient production.

Section 6. Employees who file a timely request (two weeks in advance) shall receive their vacation pay on the payday immediately preceding the commencement of their vacation.

Section 7: Management may elect to close the

plant for a vacation period whereby all employees (excepting maintenance men) may take their vacation at one time. Such vacation period shall be scheduled on or before March 1st of each calendar year and the time scheduled shall be during summer school vacation. Maintenance men required to work during the time the plant is closed for vacation will be scheduled for vacation at another time during the year.

Section 8. In the event a paid holiday falls within the employee's vacation period, eight (8) hours of straight time pay at the employee's regular rate will be paid in addition to vacation pay; however, in lieu of an extra day's pay, an employee at the time he schedules his vacation may elect to extend his vacation period by one (1) day.

Section 9.

(1) An employee who has worked at least forty (40) weeks in his second anniversary or subsequent anniversary years and who leaves for military service during that anniversary year shall be entitled to vacation pay.

(2) An employee leaving for military service in his second or subsequent anniversary years and who does not qualify for a vacation under the above Section shall be entitled to a pro rata vacation as outlined in Section 4 of this Article.

ARTICLE X

REST PERIODS

Employees will be granted a rest period on Company time of fifteen (15) minutes, prior to lunch period, and a second fifteen (15) minutes break in the

event the day's work schedule exceeds eight (8) hours. In the case where an employee is working a double shift, he shall receive the second break after the first shift and thereafter he shall follow the regular schedule of the shift on which he is working. The first scheduled rest period for the Processing Divisions will be scheduled, by department, between two (2) hours and two and three-quarter (2¾) hours from the commencement of the shift except for the Material Handling Department (in Processing Division — General) where rest periods will be based upon the starting time of the individual employee. The first scheduled rest period for the Slaughter Division will be scheduled between two (2) hours and two and three-quarter (2¾) hours from the employee's starting time, except for the Kill Floor Department where rest periods shall be scheduled not earlier than two (2) hours nor later than two and three-quarter (2¾) hours from the starting time for the Gutter.

ARTICLE XI

MEALS

Section 1: Employees in the Processing Divisions shall have a lunch period scheduled, by department, between four and one-half (4½) hours and five and one-fourth (5¼) hours from the commencement of the shift, except for the Material Handling Department (in Processing Division — General), where lunch periods shall be based upon the starting time of the individual employee. Slaughter Division employees shall have a lunch period scheduled between four and one-half (4½) hours and five and one-fourth (5¼) hours from the employee's starting time, ex-

cept for the Kill Floor Department where lunch periods shall be scheduled not earlier than four and one-half (4½) hours nor later than five and one-quarter (5¼) hours from the starting time of the Gutter.

Section 2: In the event the shift does not exceed five and one-half (5½) hours, no lunch period shall be provided.

Section 3: Employees who work in excess of ten (10) consecutive hours in any day shall, in addition to their regular pay, receive compensation in the amount of Two Dollars ($2.00) for the purpose of purchasing a meal. A fifteen (15) minute paid break will be provided except in the case of an employee working a regular double shift where the provisions of Article 10 shall prevail.

ARTICLE XII

HOLIDAY PAY

Section 1: The following days shall be observed as paid holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Eve Day, Christmas Day, and the employee's birthday.

Section 2: All regular full-time employees who have completed their probationary period shall receive eight (8) hours straight time pay for each of the above holidays not worked providing they have met the following qualifications:

(a) An employee must work the scheduled work day before and the scheduled work day following a holiday, or be on a previously (twenty-four (24) hours prior to the holiday) excused absence, to receive holiday pay. However,

such holiday pay shall be paid to all employees who are laid off or on an authorized leave of absence (this includes compensable injuries) and otherwise qualify who have worked any time the week before the holiday, the week of the holiday, or the week after the holiday.

An employee absent either the day before or the day after a holiday will on a one-time basis during the term of the Agreement be eligible to receive holiday pay upon presentation of medical verification of illness, and he is otherwise eligible for holiday pay.

It is further agreed that in the event an employee is injured on the job the day before or the day after the holiday preventing completion of the scheduled work day a forfeiture of holiday pay will not occur providing the employee is otherwise eligible for holiday pay.

(b) When a holiday falls on Sunday, the following Monday shall be observed.

ARTICLE XIII

EQUIPMENT FURNISHED BY THE COMPANY

Section 1: The Company will furnish reasonable and adequate quantities of the following equipment:

A. Steel, carborundum stones, pouches, mesh gloves, knives and safety equipment to all employees requiring them.

B. Steel toed boots for shacklers only.

C. All boots and aprons to gutters required while working on the gut table.

D. Maintenance hand tools and equipment as required.

E. Cotton Gloves.

Section 2: The Company shall launder employee's outer work clothes.

Section 3: The employee shall be responsible for the safe and efficient use of all equipment furnished by the Company and, if such equipment is lost or maliciously destroyed, the employee shall be accountable and the Company may then charge the employee (at Company cost) and deduct the cost from his wages.

Section 4: The Company will provide an employee or employees to sharpen knives for all employees required to use knives.

ARTICLE XIV

OVERTIME WORK

Overtime work in a department shall be divided as fairly and as equally as possible among qualified production employees in the department; with respect to maintenance personnel, overtime shall be divided as fairly and as equally as possible among qualified employees within the following skill classifications: general maintenance, refrigeration, scale mechanic, and electrician, with the exception of the special crew which will be equalized within itself. It is understood and agreed that such equalization cannot be affected on a daily, weekly, or even monthly basis, but efforts will be made to change any such imbalance over reasonable periods of time.

ARTICLE XV

SENIORITY

Section 1: It is the policy of the Company to

follow seniority in order that full time employees with the greatest amount of service shall have the greatest amount of employment security and opportunity for promotion. However, efficient operation of the plant and fairness to all requires that physical fitness and ability be considered as well as seniority in all matters covered in this Article. Full-time employees with the greatest seniority shall have preference in layoffs, call backs, promotions, demotions, and transfers to available permanent vacancies.

Section 2: Seniority shall be applied on a divisional basis within the plant, and shall under no circumstances overlap from one division to another, except where provisions of Section 20 and 21 shall apply. The divisions for seniority purposes are:

1. Slaughtering Division
2. Processing Division — General
3. Processing Division — Annex
4. Processing Division — Hides

Section 3: Seniority shall be established on the basis of continuous full time service with the Company at its Dakota City plant and in no instance shall seniority predate the first day of production operations at the plant, such date being February 18, 1966. A full time employee, after sixty (60) days, shall be a regular employee and shall have seniority. Prior to attaining seniority, an employee is known as a probationary employee. It is understood that the Company may, at its sole discretion, discipline or terminate a probationary employee and that no grievance concerning such discipline or termination shall be filed or processed in his behalf.

Section 4: Seniority operates both on a depart-

mental and divisional basis.

A. Department seniority units for the Slaughtering Division are established as follows:

1. Kill floor (Knocker's helper through space and pin including hot offal)
2. Loading and Sales Cooler
3. Rendering and Laundry
4. Maintenance, including Painter, Knife Sharpening and Maintenance Janitor
5. Clean-up
6. Yards
7. Hides
8. Cold Offal, Box Shop, and Freezer Load-out

B. Departmental seniority units for the Processing Division — General are established as follows:

1. "A" Processing (Days)
2. "B" Processing (Nights)
3. Maintenance, Knife Sharpening and Painter
4. Material Handling and Shipping

C. Departmental seniority units for the Processing Division — Annex are established as follows:

1. "A" (Days)
2. "B" (Nights)

D. Departmental seniority units for the Processing Division — Hides are established as follows:

1. Production
2. Maintenance

Section 5: Each employee is assigned to a department unit of a division and shall have such department seniority as shall be credited and accumulated from the first date he entered the department unless such departmental seniority be relinquished under other provisions of this Article.

Section 6: Promotions shall be made within each department. An opening shall be posted for a period of five (5) days. With consideration for physical fitness and ability, the job shall be awarded within seven (7) working days to the departmental senior employee who has bid the job. In the event a successful bidder has not been placed on his newly bid job within fifteen (15) days of the award, he shall be paid the rate of the new job on the fifteenth (15) day and thereafter until he has been moved to the newly bid job. He will be given a reasonable period of time to demonstrate proficiency. At the time an employee has qualified for a newly bid job, he shall be paid the rate of that job and shall be considered a permanent transfer. Jobs which are vacated as a result of bidding will be posted when the individual who leaves the job has qualified on his newly bid job.

Section 7: Departmental vacancies not filled from within the department will be offered for bid on the basis of divisional seniority. An employee transferring into a new department will forfeit his former departmental seniority at the time he qualifies on his new job.

Section 8: The successful bidder on the job posting at the time the posting is taken down will be required to accept the job and may not voluntarily

give it up except by bidding to another job. The successful bidder shall make a sincere effort to learn the job.

Section 9: Jobs will be posted for bidding on the following basis: When they are vacated by layoff, discharge, resignation, permanent transfer of the job holder to another job, or creation of a new permanent job.

Section 10: Temporary vacancies, such as vacancies caused by sickness, leave of absence, vacation, etc., will not be offered, unless such vacancy exceeds or is expected to exceed forty-five (45) days. In the event it is determined that the vacancy will exceed forty-five (45) days, the job will be posted as a temporary vacancy. The successful bidder shall retain "rights" to his vacated job and upon the subsequent return of the primary job holder would revert back to his previously owned job. In the event the primary job holder does not return, the temporary job would be reposted as a permanent vacancy.

Section 11: All job posting shall state the job title, department, a brief description of principal duties, and the rate for the job.

Section 12: A successful bidder on a lateral or downward bid shall be restricted from any further bidding for six (6) months from the date of such bid.

Section 13: In the event a job is not filled through the bidding procedure and an employee is assigned a permanent job or in the event an employee is disqualified from a newly-bid job, such shall not be considered as a bid.

Section 14. Seniority lists for divisions and departments shall be maintained on bulletin boards

and shall be republished each three months and a copy will be furnished to the Union.

Section 15: An employee shall lose his seniority for the following reasons:

A. Voluntarily quitting.

B. Discharge for proper cause.

C. Being absent for three (3) consecutive days without proper notification to the employer.

D. Overstaying a leave of absence without justifiable cause.

E. Layoffs for more than eighteen (18) months.

F. Failure to report from layoff within seven (7) days after written notice has been sent by certified mail to the last known address on the Company records. Upon request the Company will grant a further four-day (4) extension of time.

G. Full settlement with an employee for total disability.

H. Retirement — age 65.

Section 16: Absences of less than eighteen (18) months due to illness or injury shall not interrupt an employee's seniority; however, insurance benefits other than the employee coverage related to the specific illness or injury which caused the sick leave would be terminated at the end of twelve (12) months.

Section 17: Employees on authorized leave of absence as set forth in Article XVI, shall retain and accumulate seniority during such leave.

Section 18: Part-time employees will receive the rate of the job performed, if qualified, but will not

receive any fringe benefits granted full time employees, nor will they have seniority.

Section 19: Layoff from any division shall be established on the basis of service within the division, that is, the last man hired shall be the first placed in layoff status provided that each job must be filled by a person capable of performing the work in a satisfactory manner.

Section 20: In the event of layoff due to a reduction in force, an employee shall be permitted to displace in reverse order of his progression the holder of a job in his division who is junior to him. If a previously owned job (or jobs) in the division is not available on a seniority basis, he may then displace the junior man still working in the division. If neither of the two foregoing options are available, an employee may displace the junior man in the other division providing he has at least one (1) year's seniority and the layoff is in excess of four (4) weeks. The employee must be able to perform the job in a satisfactory manner, or be able to learn it in a reasonable period of time. However, employees will perform their presently assigned duties necessary to complete a shutdown of the plant.

Section 21. An employee who shall transfer to another division as allowed above (Section 20) shall have his former division seniority applied to his new division. However, it is understood that an employee shall be restricted from bidding for sixty (60) days from the date of transfer. In the event that an employee who has entered a new division as outlined above returns to his old division he shall be credited for the purposes of division seniority the time worked in the division which he had entered due to a

layoff. An employee who has transferred to a new division as a result of a layoff must return to his old division when his job becomes available.

Section 22. When recalling employees on layoff, they shall be recalled in reverse order of layoff.

ARTICLE XVI

LEAVE OF ABSENCE

Section 1: The Company may grant leaves of absence to employees who request same for personal reasons. Such leaves shall not be granted for the purpose of allowing an employee to take another position temporarily, try out new work, or venture into business for himself. Such leaves shall be for reasonable periods of time.

Section 2: Union Leaves – Employees, not exceeding five (5), chosen by the Union to attend Union conventions and conferences shall be granted leaves of absence upon one (1) week's advance written request to the Plant Manager, for periods not to exceed two (2) weeks. Such leave shall be without pay. Not more than three (3) employees selected by the Union shall upon written request to the Company be granted full time Union leave without pay or benefits for a period not to exceed the life of the current Labor Agreement. One (1) of whom shall serve in the status of International Representative and the other two (2) of whom shall be the representatives for the exclusive purpose of administering and servicing the Local's Labor Agreement at the Dakota City site. Such request must be received by the Company at least one (1) week before commencement of such leave and the Company must likewise be notified one (1) week in advance of such em-

ployee's desire to return to work.

Section 3: Employees who become pregnant will upon request be granted a maternity leave of absence. The beginning and ending of this leave will be determined by the employee's ability to meet the job requirements. A medical release from the attending physician or the Company doctor will be required before the employee may return to work.

Section 4: When a leave has been appropriately requested and granted under this Article, such employee shall retain and accumulate seniority.

ARTICLE XVII

GRIEVANCE PROCEDURE

Section 1: Should the Union or any individual employee desire to process a grievance pertaining to the violation of the Agreement, or violation of employees' working conditions, the matter shall be handled according to the following steps. In the event of disciplinary action involving a discharge, it is understood that a grievance which may be filed will commence at the Step III level within ten (10) working days of knowledge.

Step 1

The employee involved, with a Union representative if he so desires, shall present the matter (verbally), to his Department or Shift Superintendent affected within three (3) working days of the knowledge of the incident. The Department or Shift Superintendent shall answer the employee, within three (3) working days.

Step 2

If the matter is not settled in the first step, the

Union shall present the matter to the Personnel Director. Grievances in this step must be presented in writing within ten (10) days after the answer of the first step. The Personnel Director shall have five (5) working days in which to give an answer in writing to the Union. The affected steward and employee shall present the grievance on their own time.

Step 3

If the matter is not settled in the second step, the Union shall represent the matter to the Plant Manager. Grievances in this step must be presented in writing within six (6) working days after the answer in the second step. The Plant Manager shall have five (5) working days within which to give his answer in writing to the Union. The affected steward and employee shall present the grievance on their own time.

PRE-ARBITRATION HEARING

Section 2: If the matter is not settled in the third step, the Union shall present the matter to the Company Industrial Relations Division. Grievances in this step must be presented in writing within six (6) working days after the answer at the third step. The Company Industrial Relations Division shall have five (5) working days within which to give the Union an answer in writing. The affected steward and employee shall present the grievance on their own time. If the grievance is not resolved in this step, the grievance may be submitted to an impartial arbitrator to be selected by mutual agreement of the parties. A written request for arbitration shall be made within seven (7) days of the Pre-Arbitration answer. If within five (5) days after receipt of

such written request the parties are unable to agree upon an arbitrator, either party shall request a list of five names from the Federal Mediation and Conciliation Service and strike names to determine which one shall sit on the arbitration. His decision in the grievance shall be final and binding upon the employee(s) involved and upon the parties to this Agreement, provided he shall not have authority other than to apply the terms and conditions specifically set forth in the Agreement. It is recommended that the Arbitrator shall submit his decision, in writing, within thirty (30) days after the conclusion of the hearing or hearings as the case may be. The compensation and necessary expenses of the arbitrator shall be borne equally by the Company and the Union.

Section 3: The parties agree that the time allowed to process grievances is adequate. If the Union fails to process a grievance in the time specified herein, the grievance is ended. However, if either party requests a reasonable extension, the time limit specified for any step of the grievance procedure may be extended by mutual agreement of the Company and Union representative involved in that step. Such agreement must be in writing, for a definite time period, and signed by each representative. In the event the Company fails to answer the grievance in the specified time period, the grievance shall automatically advance to the next step.

The Company shall make every effort to release affected stewards and witnesses to attend the grievance meeting at the request of the Union. It is understood that if an individual employee wishes to pursue a grievance, he may do so under the afore-

mentioned procedure. Should an individual process his own grievance, a Union representative shall receive copies of all grievance answers and shall have the right to be present at such meetings.

ARTICLE XVIII

ADVISE OF REASON FOR DISCIPLINE

Section 1: In the event an employee is placed upon ar indefinite suspension, the Company shall within five (5) working days inform the employee of the reason for discipline and what form of discipline shall be administered.

Section 2. When a decision is made regarding disciplinary action, the Company shall impose such action in a prompt manner.

Section 3: In the event of an investigation of wrong doing, an employee who has a legitimate reason that he may be subject to disciplinary action may request Union representation by a departmental steward of his choice.

ARTICLE XIX

MILITARY SERVICE

Right to re-employment: An employee who leaves or has left a position in the employ of the Company to enter upon active service in the Armed Forces of the United States, has the right to be re-employed by the Company, when such employee has completed his military obligation, with full seniority and rights as provided for under Section 9 of the Universal Military Training and Service Act.

ARTICLE XX

MILITARY SUMMER ENCAMPMENT

Regular full-time employees on the active payroll will be granted a leave of absence upon request when they are required to participate in summer encampment training as a member of the National Guard or any U.S. Military Reserve as provided for by the laws of Nebraska.

ARTICLE XXI

JURY DUTY

Section 1: An employee called to jury duty in the county, state or Federal courts shall be excused for jury service on presenting the summons requiring such duty to his Supervisor.

Section 2: The employee will be paid the difference between his jury pay and the scheduled hours he would have worked up to a maximum of eight (8) for each full day of jury service when it falls on a scheduled work day. If the employee is dismissed from jury service during his normal scheduled hours, he will be expected to notify his Supervisor or the Personnel Office as to his availability for work.

Section 3: The employee shall endorse and turn over to the employer his jury pay check except the employer may retain any pay provided for travel expenses, and in turn will be paid by the employer the amount of his regular straight time earnings. This will be accomplished by the foreman submitting time cards with "jury pay notation"; the Personnel Director will hold the check for the employee.

ARTICLE XXII

FUNERAL LEAVE

Section 1: Absences due to the death of a member of the employee's immediate family will be treated as an excused absence. A regular full-time employee so absent will be paid during the period of his absence on the following basis.

1. In the event of death of an employee's mother-in-law or father-in-law living in the employee's household, or the death of the employee's spouse, father, mother, brother, sister, or child (including legally adopted children), the employee will be paid the number of hours his gang works, up to a maximum of eight (8) hours in any one day for each of three (3) consecutive days (one of which must be the day of the funeral) on which the gang works. Such pay shall not be included in the computation of overtime pay. In order to be eligible for funeral pay the employee must attend the funeral. The Company reserves the right to require verification.
2. In the event of death of an employee's mother-in-law or father-in-law living outside the employee's household, the employee will be paid the number of hours his gang works, up to a maximum of eight (8) hours in any one day for each of two (2) consecutive days (one of which must be the day of the funeral) on which the gang works. Such pay shall not be included in the computation of overtime pay. In order to be eligible for funeral pay the employee must attend the funeral. The Company reserves the right to require verification.

3. In the event of death of brother or sister-in-laws, the employee will be paid the number of hours his gang works, up to a maximum of eight (8) hours for the day of the funeral. Such pay shall not be included in the computation of overtime pay. In order to be eligible for funeral pay the employee must attend the funeral. The Company reserves the right to require verification.
4. In the event of the death of a close personal friend, the Company will endeavor to release the concerned employee to attend the funeral. Such leave shall not be paid.
5. An employee who finds it will be necessary for him to be absent will notify his Supervisor as soon as possible.

ARTICLE XXIII

INSURANCE BENEFITS

The Company agrees to furnish a regular full-time employees the following comprehensive insurance program:

1. Group Life
2. Accidental Death and Dismemberment
3. Hospitalization Coverage
4. Surgical Coverage
5. Major Medical Coverage

This coverage shall be in accordance with the present insurance program which is now in effect and include the following improvements:

1. Hospitalization room rate shall be "semi-private rate".

2. Group Life increased to $5,000.
3. Accidental Death and Dismemberment increased to $5,000.
4. Surgical coverage shall be increased from a maximum of $350 to a maximum of $500.
5. Maternity benefits shall consist of eighty percent (80%) of the charges incurred at the time of delivery after a $100 (one hundred dollars) Maternity Deductible is satisfied. Dependent children are covered for Major Medical benefits from the date of birth.
6. Major Medical coverage shall be increased from $10,000 to $20,000.
7. Miscellaneous hospital charges shall be increased from $240 to $340
8. Waiting period for new employees shall be six (6) months.
9. After a six (6) month waiting period for new employees, the Company will contribute Four Dollars ($4.00) per month for each eligible employee who elects to particiate toward a sick leave insurance program. The balance of the monthly premium shall be borne by the participating employee. This coverage shall be in accordance with the terms noted below:

   The maximum amount shall be $90.00 (ninety dollars) per week. In the event an employee is eligible for Workmen's Compensation benefits, this coverage will provide the difference between that amount and $90.00 (ninety dollars) per week. Such insurance shall become effective on the first (1st) day for accidents and the eighth (8th) day for illness.

The Company and the Union shall jointly select the carrier for such sick leave insurance coverage.

9. The Company will install an employee dental plan the second year of the Agreement. Such coverage shall be limited to the employee and shall consist of $100 (one hundred dollars) Calendar Year Deductible eighty percent (80%) payment of eligible expenses to a maximum of $750 (seven hundred fifty dollars) per year. There is no coverage for orthodontia.

ARTICLE XXIV

BULLETIN BOARDS

There shall be at all times maintained in the plant a bulletin board for use by the Union. Notices may be posted on such bulletin board for such matters as Union meetings, social affairs, recreational affairs and Union elections and appointments. Other notices may be posted subject to the approval of the management as to their contents.

ARTICLE XXV

WAGE RATES

Rates of Pay

Section 1.

A. Effective the date of this Labor Agreement, the Base Labor Rate of pay shall be:

Slaughter Division	$6.22
Processing Divisions	$5.92

B. Effective the second (2) year of this Labor Agreement, hourly rates shall be increased by thirty-five cents (35¢) per hour.

C. Effective the third (3) year of this Labor Agreement, hourly rates shall be increased by thirty-five cents (35¢) per hour.

D. Effective the fourth (4) year of this Labor Agreement, hourly rates shall be increased by twenty cents (20¢) per hour.

Section 2: With the exception of the Processing Division — Hides, all the other rates shall bear the same relationship to the base labor rates as they did in the previous Labor Agreement.

Section 3: Processing Division — Hides

In addition to Base Labor Rate jobs, certain jobs shall be placed in other job categories with correspondingly increased rates. They are as follows:

A. Production Department

Grade 1 — Base plus ten cents (10¢) per hour
Grade 2 — Base plus fifteen cents (15¢) per hour
Grade 3 — Base plus forty-five cents (45¢) per hour

Base Labor jobs are:
Tiers and Carriers
Loadout
Cleanup
Painters

Grade One (1) jobs are:
Brine Pullers
Forklift
Loadout Scaler
Puncher (N.C.R.)

Grade Two (2) jobs are:
Trimmers and Graders

Grade Three (3) jobs are:
Defleshers

B. Maintenance Department
Trainee — Base Labor Rate
Mechanic B — Base plus thirty cents (30¢) per hour
Mechanic A — Base plus forty-five cents (45¢) per hour
Electrician — Base plus fifty-five cents (55¢) per hour

ARTICLE XXVI

COST-OF-LIVING

Commencing with the first pay period beginning on or after January 1, 1979, and thereafter during the term of this Agreement, a Cost-of-Living adjustment, if applicable, shall be placed in effect semi-annually the first pay period beginning on or after each July 1 and January 1 respectfully. Such adjustment shall be based on the change, if any, in the U.S. Department of Labor Consumer Price Index — Revised CPI for Urban Wage Earners and Clerical Workers (1967=100), (hereinafter referred to as Revised C.P.I.-W). The adjustment in January shall reflect the change in the C.P.I. from the last preceding month of May to the last preceding month of November; the adjustment in July shall reflect the change in the C.P.I. from the last preceding month of November to the last preceding month of May. If the change in the C.P.I. during any such six (6) month period exceeds a full .4 of an index point than a Cost-of-Living adjustment shall be made which shall increase or decrease each employee's wages in the amount of one cent (1¢) per hour for each full .4 of an indext point increase or decrease in the C.P.I. during the applicable six (6) month period.

The Cost-of-Living adjustment payable at any time shall be in addition to the wage rate payable under the terms of the Labor Agreement and no reduction shall, at any time, be made below the said rate. Such Cost of Living adjustment shall be applied to the base rate while applicable.

ARTICLE XXVII

WAGE RATE CLASSIFICATION – NEW OR CHANGED JOB CONTENT

When the Company establishes a new job classification. combines or separates the duties of existing classifications, or substantially changes the work content of an existing classification, it will establish an appropriate hourly rate for the classification and notify the Local Union of such rate. It will be the intention of the Company to inform the Union of rate changes and reason for such changes in advance of actual installation. If the Union disagrees with that hourly rate, it may file a written grievance at Step 3 of the Grievance Procedure within five (5) days of such notification. The test of fairness of the Company's rate determination is whether it is in line with the existing rate structure of other jobs in the Division, giving proper consideration to the job content and skill involved. If a higher rate should be awarded, it would be paid from the date of change.

ARTICLE XXVIII

SUB-CONTRACTING

The parties to the Agreement have discussed subcontracting of work being performed by bargaining unit employees and agree as follows:

Both parties desire to minimize the effects of sub-

contracting on the job security of the employees and will work to that end.

When sub-contracting of any existing operations becomes necessary or desirable, in the sole judgment of the management, the Company will notify the Union; however, the Company agrees it will not sub-contract the operation of an entire department. If the Union desires to discuss the effects on the job security of the employees, the parties will meet for that purpose. The Company agrees to delay layoffs caused by sub-contracting until at least two (2) weeks subsequent to its notice to the Union of its intention so that the parties have ample time to suggest methods of avoiding the layoffs or minimizing their adverse effects.

ARTICLE XXIX

SAFETY COMMITTEE

Section 1: Both the Union and the Company agree accident prevention cannot be overemphasized, and the elimination of personal injuries is our foremost goal. We must dedicate ourselves to the principle of providing the safest possible work environment for all. It is the responsibility of all individuals to protect themselves and their fellow workers from harm. Therefore, both parties will continually strive toward this common goal by supporting a safety program.

Safety Operating Procedures will be established, by the Company, with the sole intention to eliminate accidents. The Procedures will be followed by Management and Hourly Personnel. To support these Procedures a separate Safety Committee will be established for the Slaughter and Processing Divisions.

Section 2: The Safety Committees shall consist of six (6) employees each; three selected by the Union, and three Management personnel by the Plant Managers or their designee. They shall meet at least monthly, on Company time, not to exceed two (2) hours, to discuss accident prevention situations and to make recommendations relating to safety. Meetings of such committees shall be scheduled at such times and in such manner as to not interfere with the orderly operation of the plant, and shall include an investigative inspection of departments limited to a division.

Section 3: It is the Plant Manager's, or his designee's, responsibility to investigate the Committee's recommendations and to advise the Committee in writing, of the action taken, if any, within one (1) week. The situations or recommendations deemed and agreed upon as critical by the Committee shall receive priority attention.

Section 4: The Plant Manager, or his designee, will advise the Union as to the date of meetings in accordance with Section 2 of this article.

Section 5: It is the avowed policy of the Company and the Union that safety equipment and devices furnished by the Company shall be worn or used by employees.

ARTICLE XXX

WAIVER, ENTIRE AGREEMENT AND SEVERABILITY

Section 1: ENTIRE AGREEMENT. This is the complete agreement providing all benefits to which any employee may be entitled, and it is expressly understood and agreed that the Company has no ob-

ligation to any employee or employees other than those provided herein.

Section 2: WAIVER. The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understanding and agreements arrived at by the parties after and exercise of that right and opportunity are set forth in the Agreement. Therefore the Company and the Union, for the term of this Agreement, each voluntarily and unqualifiedly waives the right and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to or covered in this Agreement, or with respect to any subject or matter not referred to or covered in this Agreement, even though such subjects or matters may not have been within the knowledge or contemplation of either or both of the parties at the time that they negotiated or signed this Agreement.

Section 3: AMENDMENTS. Any modification or supplement to this Agreement to be effective must be reduced to writing and executed by proper representatives of each party.

Section 4: SEVERABILITY. If any Article or Section of this Agreement or any written amendment hereto shall be held invalid by operation of law or by tribunal of competent jurisdiction or if compliance with or enforcement of any Article or Section shall be restrained by such a tribunal pending a final determination as to its validity, the remainder of this Agreement and of any written amendment

hereto, or the application of such Article or Section to persons or circumstances other than those as to which such provision has been held invalid or to which compliance with or enforcement has been restrained, shall not be affected hereby.

ARTICLE XXXI

DURATION OF THE AGREEMENT

This Agreement shall become effective May 1, 1978. However, wage increases and cost-of-living provisions shall be inconformity with the language provisions contained in Articles XXV and XXVI. This Agreement shall remain in full force and effect until May 1, 1982. Either party may on or before sixty (60) days prior to May 1, 1982 give notice to the other party of the desire of the party giving such notice, to terminate the Agreement. If such notice is not given, the Agreement shall renew itself for successive one (1) year periods until such notice is given.

Such written notice shall be given by registered mail.

Date: May 5, 1978

FOR

IOWA BEEF PROCESSORS, INC.
DAKOTA CITY, NEBRASKA

Arden C. Walker
Harry A. Hendershot
Ronald E. Miller
Clarence Brockway
Gerald J. Laedtke
David C. Blake

Maury Harris
K. W. Browning

FOR

AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICAN, AFL-CIO ON BEHALF OF ITS LOCAL UNION 222

Lewis G. Anderson
Richard D. Kelly
William Schmitz
Leroy Bergin

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No. 82-712

In the Supreme Court of the United States

October Term, 1982

IOWA BEEF PROCESSORS, INC.,
a Corporation,
Petitioner,

vs.

UNITED FOOD AND COMMERCIAL WORKERS,
LOCAL NO. 222, AFL-CIO,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

HARRY H. SMITH
(Counsel of Record)
SMITH & SMITH
632-640 Badgerow Building
Sioux City, Iowa 51101
712/255-8894
Attorney for Respondent

E. L. MERRIHEW, INC., 926 Cherry Street, Kansas City, Mo. 64106, (816) 421-3030

TABLE OF CONTENTS

Table Of Authorities I
Statement Of The Case 1
Summary Of Argument 3
Argument 3
Conclusion 9

TABLE OF AUTHORITIES

Cases

Kewanee Machinery Div. v. Teamsters, Local 21, 593 F. 2d 314 (8th Cir. 1979) 7
Mineworkers, Dist. 50 v. Bowman Transp. Inc., 421 F. 2d 934 (5th Cir. 1970) *1*-8
NF & M Corp. v. Steelworkers, Local 8148, 524 F. 2d 756 (3d Cir. 1975) 7
Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960) 3, 4, 5, 6, 7, 8, 9

Rule

U. S. Sup. Ct. Rule 17.1 9

Secondary Authority

Report of Special *Warrior & Gulf* Comm., Proceedings of ABA Section of Labor Relations Law 197, 206 (1963) 8

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STATEMENT OF THE CASE

Respondent, United Food and Commercial Workers, Local No. 222, AFL-CIO (Union) generally accepts the Statement of the Case presented in the Petition of Petitioner, Iowa Beef Processors, Inc. (Company). The Union, however, notes the following in regard to the award of the arbitrator. The arbitrator found the Union's interpretation of the guarantee provisions of the contract supported on two grounds. He concluded first the language of the disputed contract provisions supported the Union's

position on the grievance (Pet. App. C-7-C-9). He specifically found: "the meaning of Section 1 of Article VIII may be clear from a literal interpretation of its language, that meaning strongly supports the Union's position rather than the Company's." (Pet. App. C-7.) He further noted: "it is the Company rather than the Union which is seeking to avoid the plain meaning of Section 1." (Pet. App. C-9.) And, he finally held the question of the propriety of the introduction of parol evidence moot because "the Union's interpretation of the exception in the second sentence would be controlling on the basis of the conventional meaning of the words used." (Pet. App. C-9.)

Only after making the findings in regard to the language of the contract did the arbitrator set out his second, or alternative, basis for concluding the Union's reading of the contract proper (Pet. App. C-9-C-13). In that regard, the arbitrator concluded: "it *appears* that what was really involved here was a mutual misunderstanding between the parties." (Pet. App. C-9-C-10) (emphasis supplied.) That misunderstanding concerned differing subjective intentions of the parties in regard to the meaning of the words used in the disputed contract language (Pet. App. C-10). The arbitrator, then, resolved the misunderstanding under common law rules of contract construction (Pet. App. C-10-C-13).

In seeking in the Courts to vacate the arbitrator's award, the Company challenged the second or alternative ground for the award (Pet. App. A-4, B-7). The Company urged the alternative holding rendered the award in excess of the arbitrator's authority (Pet. App. A-4, B-7). Both reviewing Courts found the arbitrator's first ground for sustaining the Union's interpretation of the contract sufficient to order enforcement of his award (Pet. App. A-5, B-6).

SUMMARY OF ARGUMENT

No bases exist for this Court to grant the Company's Petition for Writ of Certiorari for three reasons. First, these proceedings present no novel or substantial issue requiring resolution by this Court. Second, this Court's directions in *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960) provide clear and adequate guidance to the lower Courts in ruling on the issue raised in this case. Third, the Company can show no need for the review of the current law it seeks.

ARGUMENT

This Court Should Deny the Company's Petition for Writ of Certiorari Because the Proceedings in This Case Present No Issue of Substantial Importance Warranting Re-Examination of Current Controlling Precedent Regarding the Courts' Enforcement of Labor Arbitration Awards.

The Union submits any issue or confusion in this case stems from the arbitrator's opinion in which he found the Union's interpretation of the contract correct on two alternative grounds. The first ground rested on a literal reading of the contract language. The second ground involved a construction of the disputed contract provisions by the arbitrator under common law rules of contract interpretation. The Company consistently has contended the arbitrator's second ground for his decision exceeded his contractual authority and prevented him from resting his ruling on the literal language of the contract.

The Union submits this Court clearly determined the issue raised by the Company in this case in its decision

in *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960). In the *Enterprise Wheel & Car Corp.* decision, this Court found:

> The opinion of the arbitrator in this case, as it bears upon the award of back pay beyond the date of the agreement's expiration and reinstatement is ambiguous. It may be read as based solely upon the arbitrator's view of the requirements of enacted legislation, which would mean that he exceeded the scope of the submission. Or it may be read as embodying a construction of the agreement itself, perhaps with the arbitrator looking to 'the law' for help in determining the sense of the agreement. A mere ambiguity in the opinion accompanying an award, which permits the inference that the arbitrator may have exceeded his authority, is not a reason for refusing to enforce the award. Arbitrators have no obligation to the court to give their reasons for an award. To require opinions free of ambiguity may lead arbitrators to play it safe by writing no supporting opinions. This would be undesirable for a well reasoned opinion tends to engender confidence in the integrity of the process and aids in clarifying the underlying agreement. Moreover, we see no reason to assume that this arbitrator has abused the trust the parties confided in him and has not stayed within the areas marked out for his consideration. It is not apparent that he went beyond the submission. The Court of Appeal's opinion refusing to enforce the reinstatement and partial back pay portions of the award was not based upon any finding that the arbitrator did not premise his award on his construction of the contract. It merely disagreed with the arbitrator's construction of it. 363 U.S. 593, 597-98 (1960).

The decision established the rule that the Courts must enforce a labor arbitration award, even if it contains ambiguities and even if those ambiguities may support a conclusion the arbitrator exceeded his or her authority. *Id.* The Union urges the lower Courts in these proceedings did nothing more than follow this Court's clear directives in the *Enterprise Wheel & Car Corp.* ruling.

Both the District Court and the Eighth Circuit Court of Appeals ordered enforcement of the arbitrator's award. The District Court found the arbitrator's holding in regard to the literal meaning of the disputed contract language adequate to support enforcement of the award. In passing upon the arbitrator's alternative holding, the District Court specifically applied this Court's holding in *Enterprise Wheel & Car Corp.* The District Court stated:

> The Court has carefully considered all of the allegations of the Iowa Beef Processors Company against the arbitration and finds that they are not sufficient to overturn the arbitration award even though it can well be argued that they have credence. The reason for this conclusion is the test which this Court must apply to the arbitration award.
>
> In the recent Eighth Circuit slip Opinion, *Ford Parcel Service, Inc. v. Miscellaneous Drivers and Helpers Union No. 610*, No. 80-1960 (8th Cir. 8/25/81), the Circuit Court stated on page 5 of said slip opinion as follows:
>
> > Judicial review of his award is limited to the question of whether it "draws its essence from the collective bargaining agreement." *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960); *Kewanee Machinery Division v. Local Union No. 21, International*

Brotherhood of Teamsters, 593 F. 2d 314, 317-18 (8th Cir. 1979); *General Drivers Local No. 120 v. Sears, Roebuck & Co.*, 535 F. 2d 1072, 1075 (8th Cir. 1976); *Western Iowa Pork Co. v. National Brotherhood Packinghouse & Dairy Workers, Local No. 52*, 366 F. 2d 275, 277-78 (8th Cir. 1966).

In the *Steelworkers* case, supra, the Court in holding on page 593 states as follows:

> The opinion of the arbitrator in this case, . . . is ambiguous; but mere ambiguity in the opinion accompanying an award is not a reason for refusing to enforce the award, even when it permits the inference that the arbitrator may have exceeded his authority.

Further, in the same opinion at page 598, the Court states as follows:

> Moreover, we see no reason to assume that this arbitrator has abused the trust the parties confided in him and has not stayed within the areas marked out for his consideration. It is not apparent that he went beyond the submission.

Neither is it apparent to this Court that the arbitrator here went beyond submission. (Pet. App. B-5-B-6.)

On appeal, the Court of Appeals concluded:

> As an interpretation of the literal language of the disputed provision, the arbitrator's decision obviously draws its essence from the collective bargaining agreement. In these circumstances, we need not reach IBP's arguments over the propriety of the arbitrator's alternative holding. Accordingly, we affirm. (Pet. App. A-5.)

In short, the Union submits both the lower Courts recognized the Company's challenge to the arbitrator's award as being grounded in its possible ambiguity. Both Courts acknowledged the possible impropriety of the arbitrator's alternative holding as exceeding his contractual authority. At the same time, both Courts heeded this Court's directions to enforce the award despite any ambiguity in the award created by the arbitrator's opinion.

The Union further urges the decisions of the lower Courts in this case do not conflict with rulings by other Courts of Appeals.[1] For example, the Third Circuit found no difficulty in following the dictates of the *Enterprise Wheel & Car Corp.* decision in *NF & M Corp. v. Steelworkers, Local 8148*, 524 F. 2d 756 (3d Cir. 1975). There, the Court found:

> In this instance, the arbitrator did not make an explicit finding that compliance with the grievance procedure was excused. Rather, his opinion states that the time bar can be reasonably construed to be inapplicable, and his award simply holds that the grievance was timely.
>
> An arbitrator is not required to list his reasons for the awards, nor should an ambiguity in his opinion be seized upon to support an inference that he exceeded his authority. *Enterprise, supra*, 524 F. 2d 756, 759 (3d Cir. 1975).

The Court, then, affirmed the District Court's order enforcing the arbitrator's award.

Similarly, the Fifth Circuit enforced an arbitration award per curiam in *Mineworkers, Dist. 50 v. Bowman*

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1. *See also Kewanee Mach. Div. v. Teamsters, Local 21*, 593 F. 2d 314, 318 n. 6 (8th Cir. 1979).

Transp. Inc., 421 F. 2d 934 (5th Cir. 1970). The District Court had found:

> A second reason for upholding the award is found in a possible ambiguity in the arbitrator's findings . . . In view of this possible ambiguity on the issue of grievant's negligence, this court must heed the warning given in *Enterprise* . . . 421 F. 2d 934, 936 (5th Cir. 1970).

The Court of Appeals adopted the findings of the District Court.

Finally, the Company urges before this Court a full scale review of the Courts' role in the enforcement of arbitration awards (Petition of Company at 11). The Company, however, cites no authority or commentary urging the need for revision of the Courts' current deference to arbitration in enforcing arbitrators' awards. Early in the development of precedent under this Court's ruling in *Enterprise Wheel & Car Corp.*, practitioners in the labor relations field recognized the value of the succinct rules established by this Court as workable and appropriate. Report of Special *Warrior & Gulf* Comm., PROCEEDINGS OF ABA SECTION OF LABOR RELATIONS LAW 197, 206 (1963). Since then, the Union urges, the policies and results fostered by the decisions have worked as in this case.

In summary, these proceedings present a simple issue regarding the manner in which a reviewing Court should deal with an ambiguity in an arbitrator's award. This Court gave the answer to the problem in *Enterprise Wheel & Car Corp.* The lower Courts found no difficulty in applying the doctrine in this case. Other lower Courts have confronted and consistently handled the same problem. And, the Company points to no urgent need to launch a re-examination of the current law.

Since these proceedings present a routine issue, since this Court resolved the precise issue in *Enterprise Wheel & Car Corp.*, since the lower Courts have handled the same issue under the doctrines established by this Court and since the Company demonstrates no other need to review existing law, the Union urges no reason exists for this Court to grant the Company's Petition. *See* U. S. SUP. CT. RULE 17.1.

CONCLUSION

For the foregoing reasons, the Union urges this Court to deny the Company's Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

Respectfully submitted,

HARRY H. SMITH
(Counsel of Record)
SMITH & SMITH
632-640 Badgerow Building
Sioux City, Iowa 51101
712/255-8094
Attorney for Respondent

Of Counsel:
MACDONALD SMITH
632-640 Badgerow Building
Sioux City, Iowa 51101
712/255-8094

Dated this 19th day of November, 1982.